

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESAL PRICE LITIGATION

) MDL No. 1456

) Civil Action No. 01-CV-12257 PBS

THIS DOCUMENT RELATES TO
01-CV-12257-PBS AND 01-CV-339

) Judge Patti B. Saris

) Chief Magistrate Judge Marianne B. Bowler

**AGREED MOTION FOR A PROPOSED AGREED ORDER CONCERNING
PLAINTIFFS' MOTION TO UNSEAL ALL CONFIDENTIAL OR
HIGHLY CONFIDENTIAL DESIGNATED DOCUMENTS
USED IN SUMMARY JUDGMENT PROCEEDINGS AS TO BMS**

Plaintiffs and defendants Bristol-Myers Squibb Company, Oncology

Thereapeutics Network Corp. and Apothecon Inc. (together, "BMS") jointly submit this agreed motion for a proposed Agreed Order on plaintiffs' Motion to Unseal All Confidential or Highly Confidential Designated Documents Used in Summary Judgment Proceedings. In support, the movants state as follows:

1. In connection with the cross-motions for summary judgment now pending before the Court, plaintiffs and moved for leave to file under seal several documents, including memoranda of law, declarations, exhibits and other materials.

2. On May 19, 2006, plaintiffs moved to unseal all documents filed in connection with the summary judgment motions.

3. In a "Procedural Order" dated May 25, 2006, the Court denied the initial motions to seal as to the summary judgment memoranda of law (except as to private medical information of the named plaintiffs), but provisionally allowed the motions to seal the exhibits, declarations and statements of facts submitted therewith.

4. After receipt of the Court's Procedural Order, counsel for plaintiffs and BMS conferred and reached agreement as to which exhibits, declarations, fact statements and other summary judgment materials relating to BMS should remain under seal. Specifically, the parties agreed that:

(i) The following exhibits filed in connection with the parties' summary judgment motions would remain under seal in their entirety: Plaintiffs' BMS Exs. 36, 40, 59 and 68 annexed to the *Declaration of Steve W. Berman in Support of Plaintiffs' Motion for Partial Summary Judgment Against All Track 1 Defendants*, dated March 15, 2006 (the "Berman Declaration") and Exhibit E of the *Merits Report And Declaration of Gregory K. Bell, Ph. D.*, dated March 15, 2006;

(ii) The following exhibits would be unsealed except that individual customer names would be redacted from the publicly-filed version of the documents: Plaintiffs' BMS Exs. 42-48 and 53-55 annexed to the Berman Declaration; and

(iii) Counsel for plaintiffs and BMS would file with the clerk's office copies of the summary judgment materials that reflect the above rulings. All other summary judgment materials relating to BMS would be unsealed.

5. Annexed hereto as Exhibit A is a proposed Agreed Order which implements the parties' agreement. Plaintiffs and BMS respectfully request that the Court enter the proposed Agreed Order.

Dated: Boston, Massachusetts
June 20, 2006

Respectfully submitted,

/s/ Steve W. Berman

Jeffrey L. Kodroff
John A. Macoretta
**SPECTOR, ROSEMAN & KODROFF,
P.C.**
1818 Market Street, Suite 2500
Philadelphia, PA 19103
Tel: (215) 496-0300
Fax: (215) 496-6611

/s/ Jacob T. Elberg

Thomas E. Dwyer (BBO No. 139660)
Jacob T. Elberg (BBO No. 657469)
DWYER & COLLORA, LLP
600 Atlantic Avenue
Boston, MA 02210
Tel: (617) 371-1000
Fax: (617) 371-1037
tdwyer@dwyercollora.com
jelberg@dwyercollora.com

Steve W. Berman
**HAGENS BERMAN SOBOL SHAPIRO
LLP**
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
Tel: (206) 623-7292
Fax: (206) 623-0594

Steven M. Edwards (SE 2773)
Lyndon M. Tretter (LT 4031)
HOGAN & HARTSON L.L.P.
875 Third Avenue
New York, NY 10022
Tel: (212) 918-3000
Fax: (212) 918-3100

Attorneys for Plaintiffs

Attorneys for Defendants Bristol-Myers
Squibb Company, Oncology
Therapeutics Network, Corp. and
Apothecon, Inc.

CERTIFICATE OF SERVICE

I, Lyndon M. Tretter, certify that a true and correct copy of the foregoing document was served on all counsel of record by e-mail and electronic service pursuant to Paragraph 11 of the Case Management Order No. 2 on June 20, 2006, by sending a copy to Lexis/Nexis for posting and notification to all parties.

/s/ Lyndon M. Tretter

Lyndon M. Tretter